

PT 04-39
Tax Type: Property Tax
Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

**GATEWAY TO THE WEST SERTOMA CLUB
APPLICANT**

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

A. H. DOCKET # 03-PT-0036
DOCKET # 02-58-130
PI # 04-12-15-429-001

RECOMMENDATION FOR DISPOSITION

Appearances: Kevin A. Sullivan, of Deeba Sauter Herd, for Gateway to the West Sertoma Club; Kent R. Steinkamp; Special Assistant Attorney General, for the Illinois Department of Revenue.

Synopsis:

The hearing in this matter was held to determine whether Macon County Parcel Index No. 04-12-15-429-001 qualified for exemption during the 2002 assessment year.

Terry Weatherby, Vice-President of Finance of Gateway to the West Sertoma Club, (hereinafter referred to as "Sertoma") was present and testified on behalf of Sertoma.

The issues in this matter are whether Sertoma is a charitable organization and whether it used the parcel for charitable purposes during the 2002 assessment year. After a thorough review of the facts and law presented, it is my recommendation that the requested exemption be denied. In support thereof, I make the following findings of fact and conclusions of law in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

FINDINGS OF FACT:

1. The jurisdiction and position of the Department that Monroe County Parcel Index No. 04-12-15-420-001 did not qualify for a property tax exemption for the 2002 assessment year were established by the admission into evidence of Dept. Ex. No. 1. (Tr. p. 8)

2. The Department received the application for exemption of the subject parcel from the Monroe County Board of Review. The board recommended granting the exemption. The Department denied the requested exemption finding that the property was not in exempt ownership and not in exempt use. (Dept. Ex. No. 1; Applicant Ex. No. 3)

3. Sertoma acquired the subject parcel by a Special Warranty Deed dated April 5, 1999. The buildings on the subject property are known as Greenwood Manor Apartments. The acquisition was subject to the covenants, restrictions and provisions of a regulatory agreement for an insured multi-family housing project entered into between the grantor and the secretary of Housing and Urban Development. (Dept. Ex. No. 1; Tr. pp. 19, 33-34)

4. According to the notes to Sertoma's financial statements for 2000 and 2001:

On April 6, 1999, Greenwood Manor Apartments, a 108-unit rental real estate property located in Decatur, Illinois (the "Project"), was donated to the Organization [Sertoma] in the amount of \$2,500,000 through a charitable transfer agreement. This agreement assigned the project's property and fixed assets, its annual rents, and its obligations to the Organization. The Organization also signed an assignment and assumption of rights and obligations of the Project's governmental assistance provided by the U.S. Department of Housing and Urban Development in the form of Housing Assistance Payments. (Dept. Ex. No. 2)

5. Sertoma stands for *service to mankind*. The Department stipulates that Sertoma is an institution of public charity for the purposes of this property tax exemption application. The sole issue, therefore, is whether the use of the property is charitable. (Tr. pp. 8-9, 15)

6. Sertoma's purposes, according to its Articles of Incorporation are:

. . . exclusively charitable, educational, and scientific within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code")(all references to the Code herein shall also include the corresponding provision of any future United States Internal Revenue Law and the regulations promulgated thereunder). The purposes for which the Corporation is organized include, but are not limited to, to raise funds and receive gifts and grants, and to use such funds, gifts and grants for its proper purposes, or to make distributions thereof for purposes and activities that qualify as exempt under Code Section 501(c)(3).

Nothing herein shall be construed to give the Corporation any purpose that is not permitted under Code Section 501(c)(3). In furtherance of its permitted purposes, the Corporation may exercise any, all and every lawful power which a corporation organized under the Act may exercise or transact and as permitted under the Illinois General Not for Profit Corporation Act. (Dept. Ex. No. 1)

7. Located on the subject property are two 40,310 square foot five-story tower apartment buildings each with 54 units. A 22,030 square foot two-story common space corridor connects the two towers. The corridor that connects the two towers is not only the first story, but also houses a lower level, which contains a common laundry. The complex is subject to a land use restriction agreement until 2021. The restriction is that the property cannot be used other than for Section 8 housing purposes until that time. The property is governed by United States Housing and Urban Development (hereinafter referred to as "HUD") regulations, Section 236. (Dept. Ex. No. 1; Tr. pp. 18-19, 32)

8. The complex consists of 108 units: 20 one-bedroom units, 60 two-bedroom units and 28 three-bedroom units. The rent for a one-bedroom apartment is \$397.00 a month. A two-

bedroom apartment rents for \$459.00 a month. For a three-bedroom unit, the rent is \$517.00 per month¹. HUD sets the rents for the units. (Dept. Ex. No. 1; Tr. pp. 19, 25)

9. HUD requires that rental property be decent, safe and sanitary. (Dept. Ex. No. 1; Tr. p. 30)

10. Greenwood Manor is operated in the same manner as HUD operates public housing. Public housing is typically operated by Housing Authorities as project based Section 8 housing. With project based public housing, the subsidy goes with the units rather than to the individual tenant. The other type of Section 8 housing is tenant based, where the voucher actually goes with the individual, who can therefore choose where they want to live. (Applicant Ex. No. 1; Tr. pp. 23-24)

11. The contract between Sertoma and a tenant in the complex on the subject property contains a section which states that the Owner will assess a \$5 late fee after the fifth day which rent is not paid and an additional \$1 for each additional day that the rent remains unpaid. (Dept. Ex. No. 1)

12. The contract between Sertoma and a tenant also contains a clause stating that the Owner may terminate the agreement/contract for any material noncompliance with the terms of the agreement. Material noncompliance includes nonpayment of rent. (Dept. Ex. No. 1)

13. Sertoma is exempt from the payment of federal income tax pursuant to a finding by the Internal Revenue Service that it is a §501(c)(3) charitable organization. (Dept. Ex. No. 1)

CONCLUSIONS OF LAW:

Article IX, §6 of the Illinois Constitution of 1970 provides, in part, as follows:

The General Assembly by law may exempt from taxation only the

¹ The testimony was that a one-bedroom rents for \$408, a two-bedroom for \$472, and a three bedroom \$531. (Tr. p. 19) The HUD agreement shows the rents in 2002 to be otherwise.

property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Pursuant to the constitutional grant of authority, the legislature has enacted provisions for property tax exemptions. At issue is the provision found at 35 **ILCS** 200/15-65, which exempts certain property from taxation as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) Institutions of public charity.
- (b) Beneficent and charitable organizations incorporated in any state of the United States, . . .
- (c) Old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for the exemption, the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code . . . and either (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based upon an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services

The statute at issue requires that a charitable organization own the property and use the property for charitable purposes and not lease it or otherwise use it with a view to profit. As the Department has conceded that Sertoma is a charitable organization for the purposes of this property tax exemption application, it is only necessary to discuss whether Sertoma's use of the

subject property is exclusively (primarily) for charitable purposes and not leased or used for profit.

The Illinois Supreme Court has interpreted charitable use to include dispensing charity to all that need and apply for it and placing no obstacles in the way of those that need the charitable benefits. The term “exclusively used” means the primary purpose for which the property is used and not any secondary or incidental purpose. Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968).

In deciding whether an applicant actually and exclusively uses the property for charitable purposes, courts consider the following characteristics:

- 1) Whether the benefits derived from the property are for an indefinite number of persons;
2. Whether the property benefits the public in such a way as to persuade them to an educational or religious conviction, for their general welfare and reduces the burdens of government;
3. Whether the organization dispenses charity to all that need and apply for it;
4. Whether the organization places obstacles of any character in the way of those who need and would avail themselves of the charitable benefits dispensed. Arts Club of Chicago v. Department of Revenue of the State of Illinois, 334 Ill.App.3d 235 (1st Dist. 2002)

These factors are not requirements, but are guidelines that are considered in assessing an organization’s charitable status. Du Page County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill.App.3d 461, 468 (2nd Dist. 1995) (*leave to appeal denied*, 164 Ill.2d 561)

At issue herein is an apartment complex that Sertoma avers is used in a charitable manner. Sertoma asserts that 55% of the tenants pay no rent for their apartment because they have no income. It also asserts that of the employed residents, 12.6% of the residents pay

anywhere from \$1 to \$49 per month rent, which equates to an annual income of \$1 to \$2,840. 12.6% pay between \$50 and \$99 per month, which represents yearly income of \$2,841 to \$4,984. Another 12.6% pay between \$100 to \$199 a month, which equates to income between \$4,985 and \$8,840 per year. 6.3% of the tenants pay over \$200 a month with earned income of over \$8,841 per year. (Tr. p. 22) However, Sertoma provided no evidence to support these figures. The only documentary evidence supplied by Sertoma included an almost illegible “Part II of the Housing Assistance Payments Contract” by and between HUD and Greenwood Manor Associates, which provides for generalized rent adjustments (Applicant’s Ex. No. 1); a letter from Terry M. Weatherby to the Department referencing various exhibits that were not attached (Applicant’s Ex. No. 2); and the notice to Sertoma from the Macon County Board of Review stating that they recommended that exemption be granted. (Applicant’s Ex. No. 3)

Sertoma failed to provide a financial statement for 2002. Its notes for the financial statements for 2000 and 2001 state that Sertoma was donated property in the amount of \$2,500,000 through a charitable transfer agreement. According to Sertoma’s 2000 and 2001 financial statements, the agreement assigned the property, fixed assets, annual rents and obligations to Sertoma, but did not state what those specific obligations and rights are. Sertoma, however, did not provide copies of the charitable transfer agreement or any information about how that agreement works.

Sertoma also signed an assignment and assumption of rights and obligations for the HUD housing assistance payments. Only a part of that document was in evidence and most of that part was illegible. Sertoma’s Housing Assistance Payments Basic Renewal Contract was in evidence as part of Dept. Ex. No. 1. It references Exhibit A, which lists the initial contract rent amounts. Exhibit A was not in evidence.

Sertoma also provided testimony that at the time of the hearing 104 of the 108 units were occupied and the age range of the approximately 250 tenants is from 1 year through 66, with an average age of 20 years old. Approximately 6% of the residents are employed. A variety of single mothers occupy the housing. Elderly and handicapped persons make up about 15% of the residents. (Tr. pp. 21-22) None of the residents appeared at the hearing and again, no documents were placed into evidence to support the seemingly self-serving testimony of the Vice President of Sertoma.

It was asserted that over \$600,000 was spent on the subject property to add air conditioning, improve the furnaces and enhance the security system. (Tr. pp. 35-36) It was also asserted that HUD gave Sertoma a grant in excess of \$100,000 for increased security measures (Tr. pp. 35-36) but again, there was no evidence to support the statements. Testimony alleged that there were no endowment or founders charges (Tr. p. 38); however, the financial statements submitted for 2000 and 2001 (Dept. Ex. No. 2), not the years at issue, have line item listings for Tenant Security deposits of \$11,449 in 2001 and \$10,426 for 2000. Regardless of a name used, it is clear that Sertoma required a degree of secured payments from its tenants.

It is clear that Sertoma has leased the subject premises. The statute states that in order to qualify for a charitable property tax exemption, property must be used for charitable purposes and not leased or used with a view to profit. Sertoma is providing housing pursuant to commercial type leases targeting an economic category of tenants. Since Sertoma hasn't provided documentary evidence that would show otherwise, it must be concluded that the property is leased for a profit.

A for-profit entity can own Section 8 Housing. (Tr. p. 51) In fact, the prior owner of Greenwood Manor was a for-profit entity. (Applicant's Ex. No. 2) Although Sertoma is exempt from federal income tax, the fact that an organization had been granted a letter of exemption

from federal income taxes or is exempt from sales and use taxes is not determinative of the issue of whether the property of an organization claiming exemption from real estate taxes was used exclusively for charitable purposes. People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill.2d 450 (1970), Clark v. Marian Park, Inc. 80 Ill. App. 3d 1010 (1980), Decatur Sports Foundation v. Department of Revenue, 177 Ill.App.3d 696 (4th Dist. 1988).

When people are told about Greenwood Manor, no one tells them that their requirement to pay rent may not be enforced. (Tr. p. 52) Although the testimony elicited was that Sertoma has a policy not to evict people that did not pay their rent (Tr. p. 28) that policy is not in writing anywhere (Tr. p. 53) and there was no documentary evidence to support the oral testimony that any rent was waived in 2002.

It therefore has not been established that Sertoma's use of the subject property benefits an indefinite number of persons in such a way as to enhance their general welfare, or that Sertoma does not place obstacles before those who need and would avail themselves of charitable benefits offered. The 2002 financial statement was not in evidence. The 2000 and 2001 financial statements attribute revenue and support from total rental income in the amount of \$554,500 in 2001 and \$546,096 in 2000 to Greenwood Manor. A category of "grant" on that financial statement shows a figure of \$159,268 for 2001 and \$39,472 for 2000; however, there was no explanation of those entries. According to both of the financial statements Sertoma's primary source of income is from its bingo operations. (Dept. Ex. No. 2) Therefore, Sertoma has not established that its funds are derived mainly from public and private charity and dispensed to all that need and apply for it, or that it reduces the burdens of government, or that Sertoma's funds are held in trust for the purposes expressed in its charter. While Sertoma's charter refers to the 501(c)(3) designation from the federal government it does not establish how Sertoma uses the subject property for charitable purposes as required for the exemption from Illinois property

taxes at issue. As the 501(c)(3) designation is not determinative, Sertoma's charter offers no light on the issue of whether the use of this property is charitable.

While Illinois courts have held that charging fees to a person who has the ability to pay will not destroy a charitable exemption, Small v. Pangle, 60 Ill.2d 510 (1975), I have no competent evidence in this case to support a finding of charitable use of the subject property.

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956). Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967).

As Sertoma has offered no evidence, except self-serving oral testimony, of its charitable and leasing activities, it is recommended that Macon County Parcel Index No. 04-12-15-429-001 remain on the tax rolls for the 2002 tax year and be assessed to Sertoma, the owner thereof.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
Date: October 7, 2004